

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000574-001 DT

09/25/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

JAMES E JOHNSON

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ADC #34559, LEWIS STINER RED
PO BOX 3100
BUCKEYE AZ 85326

v.

ARIZONA BOARD OF EXECUTIVE
CLEMENCY (001)

MARY J GREGORY

MINUTE ENTRY

This Court has jurisdiction over special actions pursuant to the Arizona Constitution Article VI, Section 18, of the Arizona Constitution, and Rule 4, Arizona Rules of Procedure for Special Actions.

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the memoranda submitted.

Acceptance of special action jurisdiction is highly discretionary.¹ Jurisdiction is generally accepted only in those cases in which "justice cannot be satisfactorily obtained by other means,"² and may be assumed to correct plain and obvious errors.³ Rule 3 of the Arizona Rules of Procedure for Special Actions states:

¹ *Pompa v. Superior Court In and For the County of Maricopa*, 187 Ariz. 531, 931 P.2d 431, 235 Ariz. Adv. Rep. 27 (App. 1997); *State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 155, 835 P.2d 485, 487 (App.1992).

² *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983); see also *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App.1996).

³ *Amos v. Bowen*, 143 Ariz. 324, 326, 693 P.2d 979, 981 (App. 1984); *State ex rel. Collins v. Superior Court of State of Arizona*, 129 Ariz. 156, 629 P.2d 992 (1981).

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The only questions that may be raised in a special action are:

- (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
- (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
- (c) Whether a determination was arbitrary and capricious or an abuse of discretion.

Petitioner is an inmate in the Arizona State Prison – Lewis – Stiner Complex. From November 1975 until October 24, 1995, Petitioner served a life sentence for second-degree murder. On October 24, 1995, Petitioner was granted parole. Petitioner signed the conditions of his parole on November 17, 1995, which included a condition that Petitioner not use narcotics. Less than a year later, Petitioner violated his parole by producing four urine samples that tested positive for drugs. The Arizona Board of Executive Clemency (hereinafter, the “Board”) revoked Petitioner’s parole. To date, the Board has denied each of Petitioner’s requests for parole due to the following reasons:

- 1. Violation of previous parole/probation
- 2. Serious and violent offense
- 3. Loss of human life
- 4. Inmate must address his criminal behavior

Petitioner declares that the phrase “eligible for parole”, as found in A.R.S. §131-412(A), “ought to mean something.” Petitioner asserts that the Board “has arbitrarily placed Petitioner in a category of automatically denying parole to prisoners with substance abuse histories, which violates due process and equal protection (rights in)... the Arizona and U.S. Constitutions.” Petitioner requests that this court direct the Board to grant Petitioner a “meaningful parole hearing.” Petitioner does not deny the drug abuse and parole violations.

In Arizona, parole is a matter of grace, and a person has no right to expect anything other than the possibility of parole.⁴ Further, while courts may compel the Board to act, they may not compel the Board to act in any particular manner.⁵

⁴ *State v. Parle*, 110 Ariz. 517, 520, 521 P.2d 604, 607 (Ariz. 1974); *Foggy v. Arizona Bd. of Pardons and Paroles*, 108 Ariz. 470, 501 P.2d 942 (Ariz. 1972); also see *State v. Williams*, 116 Ariz. 458, 569 P.2d 1356 (App. 1977)(Parole is a matter of grace and not a constitutional right; the only right is the right to request Board that the prisoner be allowed to serve the balance of his sentence outside the walls of the penitentiary).

⁵ *State ex rel. Arizona State Bd. of Pardons and Paroles v. Superior Court of Maricopa County*, 12 Ariz.App. 77, 467 P.2d 917 (App. 1970).

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This court finds no abuse of discretion by the Arizona Board of Executive Clemency, and therefore must deny all relief requested by Petitioner.

IT IS ORDERED denying all relief as requested by the Petitioner in this Petition for Special Action.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT